

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Filip Woroniecki	Team: Squad #12	CCRB Case #: 201801796	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/03/2018 5:20 PM	Location of Incident: Broadway between West 58th Street and Columbus Circle	Precinct: 18	18 Mo. SOL 9/3/2019	EO SOL 9/3/2019	
Date/Time CV Reported Mon, 03/05/2018 2:24 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/05/2018 2:24 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Richard Khalaf	00000	906567	MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Bernice Pacheco	25234	935448	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Richard Khalaf	Abuse: Lieutenant Richard Khalaf threatened to arrest § 87(2)(b) § 87(2)(b)	
B.LT Richard Khalaf	Abuse: Lieutenant Richard Khalaf interfered with § 87(2)(b) s use of a recording device.	
C.LT Richard Khalaf	Abuse: Lieutenant Richard Khalaf refused to provide his name to § 87(2)(b)	
D.LT Richard Khalaf	Discourtesy: Lieutenant Richard Khalaf spoke discourteously to § 87(2)(b)	

Case Summary

On March 5, 2018, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On March 3, 2018, at about 5:20 p.m., § 87(2)(b) who is an Uber driver, parked his vehicle on Broadway between West 58th Street and Columbus Circle in Manhattan to pick up a passenger, who remains unidentified. He was approached by Lieutenant Richard Khalaf and PO Bernice Pacheco of the Midtown North Precinct. Lieutenant Khalaf told § 87(2)(b) that he could not park his vehicle at the location and ordered him to back up. After § 87(2)(b) refused, Lieutenant Khalaf threatened to arrest him on multiple occasions (**Allegation A: Abuse of Authority – Threat of Arrest**, § 87(2)(g) § 87(2)(b) attempted to photograph his vehicle with a cellphone and Lieutenant Khalaf allegedly informed him that he could not take any pictures while the officers were issuing him a summons and that he could do it once he and PO Pacheco left (**Allegation B: Abuse of Authority – Interference with recording**, § 87(2)(g) One § 87(2)(b) moved his vehicle, he allegedly requested Lieutenant Khalaf's name and shield number. Lieutenant Khalaf allegedly walked away without responding to § 87(2)(b) request for information (**Allegation C: Abuse of Authority – Refusal to provide name and/or shield number**, § 87(2)(g) and told § 87(2)(b) to "get the fuck out of here" (**Allegation D: Discourtesy**, § 87(2)(g) As a result of this incident, § 87(2)(b) received a summons for § 87(2)(b).

NYPD video from a street camera was obtained, however, it did not show this incident. PO Pacheco's BWC footage was obtained (**Board Review 01**).

Findings and Recommendations

Allegation A: Abuse of Authority – Lieutenant Richard Khalaf threatened to arrest § 87(2)(b)

Allegation B: Abuse of Authority – Lieutenant Richard Khalaf interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) stated that he parked his vehicle on Broadway between West 58th Street and Columbus Circle in Manhattan to pick up a passenger. Half of his vehicle was positioned in the far-left traffic lane while the other half crossed the double white line into Columbus Circle Park. Before § 87(2)(b) could pick up the passenger, Lieutenant Khalaf informed him that he could not park his vehicle at the location and § 87(2)(b) replied that he did not block the traffic. In his sworn statement, § 87(2)(b) explained that Broadway has two traffic lanes, and that other motorists were able to go around him without any issues. As § 87(2)(b) asked Lieutenant Khalaf to allow him to pick up the passenger, Lieutenant Khalaf instructed § 87(2)(b) to back up his vehicle across the street. § 87(2)(b) refused to do it and replied to Lieutenant Khalaf that it was unsafe and that he did not feel comfortable doing it. Lieutenant Khalaf then asked § 87(2)(b) "Do you want to go to jail?" and § 87(2)(b) answered, "Please just give me a ticket and let me go." As § 87(2)(b) anticipated receiving a summons and wanted to have proof for court that he did not block traffic, he exited his vehicle and took a photograph of it with his cellphone. Lieutenant Khalaf told § 87(2)(b) that he could not take photographs while he and PO Pacheco were issuing him a summons and that he could do it once they left. Lieutenant Khalaf also stated to § 87(2)(b) "If you don't back up, you're gonna be arrested" (**Board Review 02**).

§ 87(2)(b)'s sworn statement was consistent with his phone statement. However, in his phone statement, § 87(2)(b) stated that it was Lieutenant Khalaf, and not PO Pacheco, who handed him the summonses (**Board Review 15**).

Lieutenant Khalaf stated that he observed § 87(2)(b) park his vehicle in the far-left lane on Broadway between West 58th Street and Columbus Circle in Manhattan. § 87(2)(b) then exited his vehicle and positioned himself near its trunk. As Lieutenant Khalaf and PO Pacheco approached § 87(2)(b) Lieutenant Khalaf informed him that it was unsafe for him to stop in an active traffic lane where cars were exiting the Columbus Circle and entering Broadway at a high rate of speed. Lieutenant Khalaf instructed § 87(2)(b) to get inside of his vehicle and move it to a safe location across the street and § 87(2)(b) refused to do it. § 87(2)(b) then informed Lieutenant Khalaf that he could pick up the passenger at this location and Lieutenant Khalaf explained to § 87(2)(b) that if he did not obey his command, he was going to be placed under arrest. Lieutenant Khalaf did not remember how many times he told § 87(2)(b) that he could be arrested or if he mentioned the reason for the arrest. During his CCRB interview, Lieutenant Khalaf stated that § 87(2)(b) parked his vehicle at a collision prone location, where he could not be easily seen by other motorists exiting Columbus Circle. Lieutenant Khalaf acknowledged that while § 87(2)(b) was on the rear-passenger side of his vehicle and was positioned in a traffic lane, he held a cellphone in his hand. Lieutenant Khalaf did not observe § 87(2)(b) take any photographs with his cellphone, and was not informed by § 87(2)(b) that he wanted to photograph anything during the incident. Lieutenant Khalaf denied telling § 87(2)(b) that he could not take any photographs while he and PO Pacheco were issuing him a summons. He also did not tell § 87(2)(b) to take the photographs once he and PO Pacheco left the incident location. Lieutenant Khalaf admitted to telling § 87(2)(b) to get inside of his vehicle while he observed him with a cellphone in his hand, in order to ensure everyone's safety during the encounter **(Board Review 03)**.

§ 87(2)(g) PO Pacheco elaborated that three quarters of § 87(2)(b)'s vehicle were parked in the far-left traffic lane, while its remaining portion was inside of the Columbus Circle Park, where livery vehicles could not legally stop. PO Pacheco stated that § 87(2)(b) repeatedly refused to get inside of his vehicle and move it across the street, and that he told Lieutenant Khalaf that he could “easily park here” and was allowed to stop in the far-left lane of Broadway. Lieutenant Khalaf informed § 87(2)(b) that if he continued to refuse to move his vehicle, he was going to be arrested. § 87(2)(b) could have been arrested for disobeying a lawful order. As PO Pacheco issued § 87(2)(b) a summons, she overheard Lieutenant Khalaf tell § 87(2)(b) that he should not be taking photographs while standing in the street because he could get hit by a car. She also noted that civilians can take photographs during vehicle stops given the conditions are safe **(Board Review 04)**.

Video recording of the incident was obtained from PO Pacheco's BWC. Snag-it clip of the video was embedded below.



2018-08-06_17-45-18.mp4

At 00:10 minutes on the recording, § 87(2)(b) states to Lieutenant Khalaf, “You don't need to stop my car, I can easily stop here.” As Lieutenant Khalaf informs § 87(2)(b) that he is not allowed to stop at the incident location and PO Pacheco states, “You cannot easily stop here,” § 87(2)(b) can be heard saying, “Okay, can I take a picture?” while holding a cellphone in his right hand. At this time § 87(2)(b) is standing to the left of his vehicle's trunk and is positioned inside

Page 3

CCRB Case # 201801796

of the Columbus Square Park, a couple feet away from the traffic lane. Lieutenant Khalaf then tells § 87(2)(b) “You need to get in the car and move it now” while § 87(2)(b) remains standing near his vehicle. § 87(2)(b) then extends the camera in the direction of his vehicle and says, “Okay let me take the picture, because I have to go to the court,” and Lieutenant Khalaf answers, “Get back in the car or I’ll place you under arrest. Do you want to get arrested? Get back in your car and move it to the side.” At 00:27 minutes, § 87(2)(b) once again states, “I have to go to the court and I have to explain to the judge” while Lieutenant Khalaf answers and cuts him off, “I am going to place you under arrest. Get in your car, move it to the side out of the traffic lane, okay? You can park it there, and then I’m going to issue you a summons.” At 00:47 minutes, § 87(2)(b) enters his vehicle and after being given numerous instructions from Lieutenant Khalaf, at 02:13 minutes he parks his vehicle at the specified location **(Board Review 05)**.

PO Pacheco issued § 87(2)(b) two summonses during this incident. One was for obstructing a traffic lane **(Board Review 16)** and the other, for failure to comply with a lawful order **(Board Review 17)**.

A person is guilty of obstruction of traffic when he operates a vehicle in a manner which obstructs traffic in lanes specifically designated for the movement of traffic. N.Y.C. Department of Transportation, Section 4-07(b)(1) **(Board Review 06)**.

No person shall fail or refuse to comply with any lawful order or direction of any police officer or flagperson or other person duly empowered to regulate traffic. N.Y.S. Vehicle and Traffic Law, Article 23, Section 1102 **(Board Review 07)**.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she obstructs vehicular or pedestrian traffic. N.Y.S. Penal Law, Section 240.20(5) **(Board Review 18)**.

A person may record police activity unless the person engages in actions that endanger the safety of the officer, the suspect, or others in the vicinity; violate the law, or incite others to violate the law. A person may also record police action as long as their use of recording does not amount to obstruction of a police officer’s investigation and their zone of safety. The zone of safety should only encompass the physical space necessary to safely perform police actions and at minimum, it is defined as “the span of an officer’s arms when he or she is engaged in enforcement activities” NYPD Patrol Guide, Section 203-29 **(Board Review 08)**.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority – Lieutenant Richard Khalaf refused to provide his name to § 87(2)(b)

Allegation D: Discourtesy: Lieutenant Richard Khalaf spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after he backed his vehicle to the corner of Broadway and Columbus Circle, he asked Lieutenant Khalaf for his name and shield number. Lieutenant Khalaf did not reply to § 87(2)(b)'s request and instead walked away from the intersection toward the RMP parked in the bike lane across the street. As PO Pacheco handed § 87(2)(b) summonses and began walking back to the RMP, § 87(2)(b) observed Lieutenant Khalaf sitting in the RMP. Without exiting the RMP, Lieutenant Khalaf yelled toward § 87(2)(b) "Get the fuck out of here." § 87(2)(b) did not reply to the comment and Lieutenant Khalaf along with PO Pacheco left the incident location (**Board Review 02**).

In his unverified phone statement, § 87(2)(b) stated after he re-parked his vehicle, Lieutenant Khalaf approached his vehicle, handed him two summonses, and told him to "get the fuck out of here" (**Board Review 09**).

Lieutenant Khalaf acknowledged that PO Pacheco wrote two summonses, which she or Lieutenant Khalaf handed to § 87(2)(b). Lieutenant Khalaf did not remember whether § 87(2)(b) asked him for his name and shield number, denied refusing to identify himself to § 87(2)(b) and noted on the record that as a Lieutenant, he does not have a shield number. Lieutenant Khalaf did not remember if he had any interactions with § 87(2)(b) after he was issued summonses. Lieutenant Khalaf denied telling § 87(2)(b) to "get the fuck out of here" and he did not use any profanity, including the word "Fuck," during the incident (**Board Review 03**).

PO Pacheco stated that after four to five minutes of speaking with Lieutenant Khalaf, § 87(2)(b) finally got inside of his vehicle and parked it across the street. PO Pacheco did not hear § 87(2)(b) ask Lieutenant Khalaf for his name and shield number and did not hear him refuse to identify himself to § 87(2)(b). PO Pacheco believed that Lieutenant Khalaf was inside of the RMP when she handed § 87(2)(b) summonses. After § 87(2)(b) received summonses, Lieutenant Khalaf did not have any interactions with him and PO Pacheco did not hear Lieutenant Khalaf instruct § 87(2)(b) to leave the location. PO Pacheco also did not hear Lieutenant Khalaf tell § 87(2)(b) to "get the fuck out of here." She did not hear Lieutenant Khalaf use profanity, including the word "fuck," during the incident (**Board Review 04**).

Video recording of the incident was obtained from PO Pacheco's BWC. Snag-it clip of the video was embedded below.



2018-08-06_17-52-54.mp4

At 02:10 minutes on the recording, PO Pacheco's BWC shows § 87(2)(b) reverse his vehicle onto the corner of Broadway and Columbus Circle while Lieutenant Khalaf holds up the traffic coming in their direction. Between 02:35 and 02:40 minutes, Lieutenant Khalaf can be seen standing in the street, a few feet away from § 87(2)(b)'s driver's side window, which is entirely rolled down. At 02:40 minutes, Lieutenant Khalaf crosses walks away from § 87(2)(b)'s vehicle and at 02:45 minutes, he approaches the RMP and instructs PO Pacheco to issue § 87(2)(b)

Page 5

CCRB Case # 201801796

§ 87(2)(b) a summons for “failure to comply.” PO Pacheco then enters the RMP, where she remains until 08:07 minutes. As PO Pacheco is issuing the summons, her BWC is fixed on the inside of the RMP and does not show Lieutenant Khalaf. When PO Pacheco exits the RMP, she and Lieutenant Khalaf, who is standing on the passenger side of the RMP, approach § 87(2)(b)s vehicle together. PO Pacheco then hands § 87(2)(b) summonses and Lieutenant Khalaf does not speak to him. PO Pacheco and Lieutenant Khalaf then walk back in the direction of the RMP and PO Pacheco turns off her camera before they reach it (**Board Review 10**).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (**Board Review 11**).
- Lieutenant Khalaf has been a member of service for 24 years and has been a subject in 11 prior CCRB complaints involving 18 allegations, one of which has been substantiated § 87(2)(g)
 - In CCRB Case # 201406717, Lieutenant Khalaf a threat of arrest allegation was substantiated against Lieutenant Khalaf. The CCRB recommended “Command Discipline B” and he received “Command Discipline A.” § 87(4-b) § 87(2)(g)

(**Board Review 12**).

Mediation, Civil and Criminal Histories

- This case was sent to mediation on March 22, 2018. Lieutenant Khalaf rejected mediation and the case was returned for investigation on April 16, 2018.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of July 18, 2018, there was no Notice of Claim filed for this complaint (**Board Review 14**).

Squad No.: 12

Investigator: _____ INV. WORONIECKI 08/10/2018
Signature Print Title & Name Date

Squad Leader: _____ IM RIGIE _____
Signature Print Title & Name Date

Reviewer: _____ _____
Signature Print Title & Name Date